

88-137

Supreme Court, U.S.

FILED

OCT 25 1988

JOSEPH F. SPANIOLO, JR.
CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

EDITH MAE GRACEY,

Petitioner

vs.

C. DENSON DAY, BARBARA M. DAY,

UNITED STATES OF AMERICA,

Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS FOR THE THIRD CIRCUIT

EDITH MAE GRACEY, PRO SE
512 MIFFLIN BOULEVARD
SHILLINGTON, PA. 19607
(215) 777-8756

QUESTIONS PRESENTED

1. WHETHER THE PERMANENT INJUNCTION ISSUED
(WITHOUT A HEARING OR TERMS) BY THE
DISTRICT COURT WAS UNJUSTLY AFFIRMED BY
THE COURT OF APPEALS?
2. WHETHER THE BANKRUPTCY COURT ITSELF
SHOULD BE THE PREVAILING POWER OF
PROTECTION AND NOT THE CHAPTERS WITHIN
TO PRESENT INTERNAL CONSISTENCY AND
EQUAL PROTECTION OF THE 14 AMENDMENT?
3. WHETHER THE NINTH AMENDMENT GRANTS A
DEBTOR THE RIGHT TO REPAY HER CREDITORS
THE FULL AMOUNT OF DEBT AS AN ALTERNATIVE
TO THE FORCEFUL SEIZURE OF HER PROPERTY
AND LIVELIHOOD?

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OPINIONS BELOW

The Judgment Order of the Court of Appeals
is attached as Appendix A.

JURISDICTION

The Judgment Order of the Court of Appeals (Appendix A) was entered on May 20,1988.The Petition For Rehearing denied on June 20,1988. Petition For Stay Of Mandates pending the filing for Writ of Certiorari in the Supreme Court granted until July 27,1988.

Jurisdiction is invoked pursuant to 28 U.S.C.S. 1254(2) and Supreme Court Rule 17.1 (a)(c).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S.C.S.Constitution ,Amendment five:

"No person shall be held to answer for a capital,or otherwise infamous crime,unless as a presentment or indictment of a grand jury,except in cases arising in the land or naval forces,or in the militia,when in actual service in time of war or public danger,nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life,liberty,or property,without due process of law; nor shall private property be taken for public use,without just compensation"

U.S.C.S.Constitution,Amendment nine:

"The enumeration in the Constitution of certain rights,shall not be construed to deny or disparage others retained by the people."

U.S.C.S.Constitution,Amendment fourteen:

"Section 1.All persons born or naturalized in the United States,and subject to the jurisdiction thereof,are citizens of the United States and of the state wherein they reside.No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life,liberty,or property, without due process of law;nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

On November 17, 1987 oversecured creditor C.Denson Day filed a Motion for permanent injunction. On November 19, 1987 a permanent injunction was granted (without a hearing or terms) which permanently alters the due process rights of petitioner, Edith Gracey, to appeal. A concise statement of the case follows.

Mortgagors C.Denson Day and Barbara M. Day had confessed judgment, without a hearing, against the petitioners \$350,000 properties for \$31,297 principal debt and \$34,083 in interest for the one year mortgage. The mortgage contains obscure confession of judgment clauses which Edith Gracey did not see or understand. Her counsel Michael Morrissey had obtained a Support Order on February 9, 1984 which required her codebtor spouse to "bring current and keep current the mortgages held by American Bank and C. Denson Day". No hearing was held to inform the Court. On March 8, 1984 Michael Morrissey had Attorney Maynard put Edith Gracey in

Bankruptcy Chapter 7 to prevent sheriff's sale on March 9, 1984 of petitioners properties.

American (Meridian) Bank intervened and consolidated the proceedings with Day in the Bankruptcy Court. American (Meridian) Bank debt was \$60,000 with no arrears. The Court requested due to the "huge equity" that the case be converted to Chapter 13 for voluntary repayment, approved a 100% payment plan to all creditors, but did not sign the order as stated. Bank and Day consistently demand sale of all properties and refuse all payment checks and return them. Other creditors have accepted payment in full and object to sale.

The Court illegally converted the case back to Chapter 7 from the functioning 13, without cause, under duress and coercion to debtor. There was no logical reason or benefit to knowingly agree. The petitioner was represented by counsel at all times.

Their actions were destructive. She proceeded pro se to appeal.

The Court sustained her objections to the sale of the properties-ordered a stay (without an opinion) and then during the stay closed the profitable tax paying nursery schools business livelihood.Day moved to lift the stay and proceed to sale-the stay was lifted(during appeal)and sale ordered.Edith Gracey appealed the lifting of the stay and sale to the District Court.A second appeal involved the closing of the schools.Day immediately filed for a permanent injunction to prevent Edith Gracey any opportunity to defend herself and file appeals without the prior written approval of District Court Judge Charles Weiner.Two days later Judge Weiner granted the permanent injunction without a hearing or terms.Ten days later Judge Weiner denied both appeals stating that he was"loathe to act as overseer to the Bankruptcy Judge"and further finding that although Third Circuit decisions to the contrary,the lifting of the stay was not a final appealable order.Appeal of American (Meridian)Bank claim was refused by clerks.

On appeal to the U.S. Appeals Court Third Circuit the appeals of the permanent injunction, closing of the nursery schools, and lifting of the stay for sale were consolidated by the Court. Briefs were filed only by the petitioner. All three appeals were- District Court judgment affirmed (without opinion or comment) and costs taxed against appellant. Petition for rehearing was filed. A stay of mandates was filed and granted until July 27, 1988 to file Petition for Writ of Certiorari in the Supreme Court.

Pursuant to Supreme Court Rule 21.1(i) the basis for federal jurisdiction in the court of first instance follows:

Closing of the schools (C.A. 87-1760) and lifting of the stay for sale (C.A. 87-1759) appealed to the District Court under Bankruptcy Rule 8001(a), 8003(c) and 28 USC 2103.

Appeal of the permanent injunction (C.A. 87-1746) appealed to the Court of Appeals under 28 USCS 1291 and FRAP Rule 2.

ARGUMENT

(Appeal 87-1746)

THE PERMANENT INJUNCTION
ISSUED (WITHOUT A HEARING
OR TERMS) BY THE DISTRICT
COURT WAS UNJUSTLY AFFIRMED
BY THE COURT OF APPEALS.

The permanent injunction was issued two days after the Day Motion was filed. No hearing was held and the terms were not specific. It clearly violated Federal Rules of Civil Procedure Rule 65(d):

"Every order granting an injunction shall set forth the reasons for its issuance; shall be specific in terms..."

There is no bond or security, which violates Rule 65(c);

"No order shall issue except upon the giving of security by applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to be wrongfully enjoined".

The Court of Appeals did not address the merits of the appeal, but rather sanctioned the actions of the District Court "affirmed".

This Supreme Court did reverse a District Court where it concluded that the injunction did not comply with a provision of the Federal Rules of Civil Procedure, without ever reaching the "merits" of the question involved. See, e.g. Schmidt v Lessard, 414 US 473, 38 L Ed 2d 661, 94 S Ct 713 (1974). Fair notice and opportunity for an adversary hearing is required before an injunction is issued. Board of Regents v Roth, 408 US 564, 92 S Ct 2701. The permanent injunction states:

"the debtor, Edith W. Gracey, appearing pro se, is hereby permanently enjoined from filing any interlocutory appeal or other motion from a non-appealable order unless she first presents a copy thereof to the undersigned and receives approval for its filing in writing. The Clerk shall be notified to refuse such aforesaid unaccompanied by the written approval of the undersigned. BY THE COURT, s/Charles R. Weiner."

The Court of Appeals has affirmed the District Court Order and thereby sanctioned the Motion of creditor Day also. Creditor Day should not be entitled to permanently alter the due process appeal rights of Edith Gracey.

"There is no constitutional claim of the creditor to more than that"(the debt).An Almanac of Liberty by William O.Douglas,p.290 Garden City,N.Y.;Doubleday,1954,Lib.Cong.Card No.54-11158.'Prosecution is vindictive and violates due process,if it is undertaken to punish a person for exercising a protected statutory or Constitutional right"US v Napue, CA 7(111)1987,834 F2d 1311. The timing and circumstances surrounding this injunction will secrete the past,present(and probably future) wrongdoing in the Lower Courts.The petitioner has exhausted all judicial remedies except for the exercise of the U.S.Supreme Court's power of supervision.(pursuant to Supreme Court Rule 17.1(a)).

The Constitutional five and fourteenth Amendments to due process appeal are critical to this petitioner because of the huge value of her home and two nursery schools versus the small amount of debt."Congress provided for interlocutory appeals from orders specified in 28 USCS 1292(a)(1)"to permit litigants to

effectually challenge interlocutory orders of serious,perhaps irreparable,consequence."New York Asso.of Homes for Aging v Toia, (1977,CA2 NY)559 F2d 876,23 FR Serv 2d 1101.It is not possible for a citizen to have"a little bit of due process"-you either have it or you don't.The petitioner does not have due process. "Concept of finality under 28USCS 1291 is to be applied in more pragmatic and less technical way in bankruptcy cases than in other situations".A.H.Robins Co. v Piccinin(1986, CA4 Va)788 F2d 994,CCH Bankr L Rptr 71094.The normal due process of procedure through the judicial system results in many different legal views of the same subject and should not be prevented.

This Supreme Court ruled in Carroll v President and Comrs.of Princess Anne,393 US175, 89 S Ct347 "There is a place in American jurisprudence for ex parte issuance,without notice,of temporary restraining orders of short duration,but there is no place within the area of basic freedoms guaranteed by the First Amendment for such orders where no showing an opportunity to participate."

2. The Bankruptcy Court itself should be the prevailing power of protection(not the Chapters within) for consistency and equal protection to everyone. The Day small mortgage contains an obscure confession of judgment clause which should not entitle them to any interest.¹ The petitioner did not see or understand that clause but the ramifications of it are clear now. Her attempts to pay creditors Day and American(Meridian)Bank (also small mortgages containing obscure confession of judgment clauses) have been thwarted by them and her payments returned and refused. They have driven her into the Bankruptcy Court where neither the Court nor the attorneys seem to be effectively protecting the debtor who pays her debts. The Rules of the Court, with varying Chapters and decisions, have created a quagmire of legal and financial destruction while the petitioner was represented by counsel. The Court and petitioners counsel were telling her one thing and doing another in chambers.

1. In re Souders 75 B.R. 427 (Bky-E.D. Pa. 1987)
Overmyer v Frick, 405 US 174, 31 LEd 2d 124, 92
S Ct 775

The trustee has not performed in a fiduciary capacity but rather all parties based the entire course of this case in a discriminatory manner against the debtor-badgering her for paying creditors. Something is wrong with a judicial system that erodes the estate through a technique which hinders the payment of debt. The profitable, tax paying livelihood nursery school business has been closed by the Court which was to protect the petitioner. The Court stated May 13, 1986 (at hearing to convert the case from a Chapter 13 approved repayment plan to a liquidation Chapter 7) that the plan was denied due to the spiraling interest of Day and American (Meridian) Bank. The interest was not legal. The debtor was represented by counsel. The Court subsequently sustained the pro se debtor's objections to the sale of the three properties and included a stay. The Court closed the two schools during the stay and again lifted the stay for sale of all three properties. The Third Circuit Appeals Court ruled lifting of stay a final order but affirmed denial of both appeals by District Court.

3.

CONCLUSION

The U.S. Constitutional Amendment Nine was left as an open door for the citizens. The petitioner respectfully requests this Honorable Supreme Court grant this writ of Certiorari to permit her to present to the Court the reasons why the Ninth Amendment allows a debtor the right to repay her creditors the full amount of debt, as an alternative to the forceful seizure of her home and nursery school livelihood. The petitioner, Edith M. Gracey, has exhausted all judicial remedies except for the exercise of the U.S. Supreme Court's power of supervision. She requests that this Writ of Certiorari be granted.

Respectfully submitted,

Edith Mae Gracey

Edith Mae Gracey, pro se

CERTIFICATE OF SERVICE

C.DENSON DAY, BARBARA M. DAY)
 : SS.
 UNITED STATES OF AMERICA)

Pursuant to Supreme Court Rule 28.5(b)(c)
COMES NOW Edith Mae Gracey, and after having
been duly sworn, states as follows:

1. That I am representing myself Pro Se.

2. That on July 25, 1988 I will hand timely deliver 40 copies of the foregoing Petition For Writ of Certiorari to the U.S. Supreme Court, Clerks Office in Washington, D.C.

3. That on July 25, 1988 I will deposit 3 copies of the foregoing Petition For Writ of Certiorari in the U.S. Mail, first class, prepaid to each of the following parties required to be served:

Solicitor General of the U.S.
Department of Justice
Washington, D.C. 20530

SWORN AND SUBSCRIBED BEFORE ME
THIS 23rd DAY OF July 19 82
Wm. R. Kainy

Mark Tunnell, Esquire (Day Counsel)
P.O. Box 562
West Chester, Pa. 19381-0562

NORITA R. KING, Notary Public
Boro of Shillington, Berks County, Pa.
My Commission Expires Dec. 3, 1989

Frederick Reigle, Esquire (Trustee)
P.O. Box 4010
Reading, Pa. 19606

Edith Mae Gracey
Edith Mae Gracey, Pro Se

APPENDIX "A"

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

NOS. 87-1746, 87-1759, 87-1760

IN RE: EDITH M. GRACEY a/k/a

MRS. J. RAYMOND GRACEY

Edith M. Gracey,

Appellant

On Appeal from the United States District
Court For The Eastern District of Pennsylvania
(D.C. Civil Action Nos. 87-7080, 87-7081)
District Judge: Honorable Charles R. Weiner

Submitted May 12, 1988

BEFORE: STAPLETON, GREENBERG, AND SCIRICA

Circuit Judges

JUDGMENT ORDER

After consideration of the contentions raised
by appellant, it is
ORDERED AND ADJUDGED that the judgments of the
district court are hereby affirmed.

Costs taxed against appellant. By the Court,

s/ Walter K. Stapleton
Circuit Judge

Dated: May 29 1988

Attest: s/ Sally Mrvos
Clerk

APPENDIX "B"

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NOS. 87-1746, 87-1759, 87-1760

IN RE: EDITH M. GRACEY a/k/a

MRS. J. RAYMOND GRACEY

Edith M. Gracey,

Appellant

SUR PETITION FOR REHEARING

BEFORE: GIBBONS, CHIEF JUDGE, SEITZ, HIGGINBOTHAM,
SLOVITER, BECKER, STAPLETON, MANSMANN, GREENBERG,
HUTCHINSON, SCIRICA, AND COWEN, Circuit Judges

The petition for rehearing and the amended petition for rehearing filed by appellant in the above-entitled cases having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petitions for rehearing are denied. By the court,

Dated: JUN 20 1988

s/ Walter Stapleton
Circuit Judge

APPENDIX "C"

June 22,1988

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NOS.87-1746,87-1759,87-1960

In Re: Edith M.Gracey,

Appellant

Pursuant to Rule 41(b) of the Federal
Rules of Appellate Procedure, it is ORDERED
that issuance of the certified judgment in
lieu of formal mandate in the above cause be,
and it is hereby stayed until July 27,1988.

s/ Walter K.Stapleton

Circuit Judge

Dated: June 24,1988

APPENDIX "D"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
IN RE: :

EDITH M.GRACEY a/k/a: FILED NOV 30 1987
MRS.J.RAYMOND GRACEY:

ORDER

The appeal of the debtor, Edith M. Gracey,
from the Order of the bankruptcy court dated
September 15, 1987 denying the debtor's
"Emergency Petition for Rule To Permit Debtor
to Operate Schools" is DISMISSED for lack of
jurisdiction.

IT IS SO ORDERED.

s/ Charles R. Weiner
Charles R. Weiner

APPENDIX "E"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: : CIVIL ACTION

EDITH M.GRACEY,a/k/a :

MRS.J.RAYMOND GRACEY : NO. 87-7081

ORDER

The appeal of the debtor,Edith M.Gracey,
from the Order of the bankruptcy court dated
October 9,1987 lifting the stay imposed by
the June 17,1987 Order is DISMISSED for
lack of jurisdiction.

IT IS SO ORDERED.

s/Charles R.Weiner

Charles R.Weiner

APPENDIX "F"

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: :

FILED NOV 19 1987 BANKRUPTCY 84-00778T

EDITH M. GRACEY, Debtor : CIVIL ACTION 877080

ORDER

AND NOW, this 18th day of November, 1987, the debtor, Edith W. Gracey, appearing pro se, is hereby permanently enjoined from filing any interlocutory appeal or other motion from a nonappealable order unless she first presents a copy thereof to the undersigned and receives approval for its filing in writing.

The clerk shall be notified to refuse such documents aforesaid unaccompanied by the written approval of the undersigned.

BY THE COURT,

s/Charles R. Weiner J.

ENTERED 11/19/87

CLERK OF COURT

APPENDIX "G"

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE;

EDITH M. GRACEY a/k/a : CASE NO. 84-00778T

MRS. J. RAYMOND GRACEY, :

DEBTOR :

ORDER

AND NOW, this 15th day of September, 1987, for the foregoing reasons, it is ORDERED

1. that debtor's "Emergency Motion" is denied; and

2. that debtor shall immediately cancel the "open house" scheduled at the school on September 19 and 20, 1987; and

3. that debtor shall immediately write to the parents of all of the children purportedly enrolled in the school, including any parents known by the debtor who are planning to send their children to the school, stating clearly that the school will not reopen on September 23, 1987; and

4. that the letters described in the above paragraph shall contain no references to the school opening at any future date; and

5.that the debtor shall certify to the Court the date on which the letters were mailed and identify the individuals to whom they were mailed.

s/Thomas M.Twardowski

Reading,Pa

Thomas M.Twardowski

Bankruptcy Judge